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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-9381

LAVINIA HAGUE, Personal Representative of the Estate of RALPH ALVIN HAGUE, Deceased,

Respondent,

vs.

ALLSTATE INSURANCE COMPANY,

Petitioner.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

PLAINTIFF-RESPONDENT'S BRIEF

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QUESTION PRESENTED

Is the Minnesota Supreme Court's decision to apply the laws of Minnesota in this case in accord with the choice of law decisions of the United States Supreme Court and thereby warrant dismissal of the petition for writ of certiorari?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional basis for the petition is section 1 of the 14th Amendment to the United States Constitution which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws

and Article 4, Section 1 which provides in part:

> Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.

STATEMENT OF THE CASE

The Respondent agrees with the Statement of the Case contained in the Petitioner's Brief.

ARGUMENT

THE MINNESOTA SUPREME COURT'S DECISION TO APPLY THE LAWS OF MINNESOTA IN THIS CASE IS IN ACCORD WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT.

At this point the precise issue in controversy is whether the facts of the case warrant the granting of certiorari. Rule 19 of the rules of the Supreme Court concerns the granting of Certiorari and states in part:

> A review on writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.
>
> where a State Court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court.

Sup. Ct. R. 19.

The Respondent's position is that an examination of the decisions of the United States Supreme Court that addresses the choice of laws issue involved in the case discloses that the Minnesota Supreme Court's choice of Minnesota law over Wisconsin law is in accord with the decisions of this Court, and therefore warrants a denial of certiorari. The Petitioner's request for certiorari is based upon the claim that the Minnesota Supreme Court's decision to apply Minnesota law to the facts of this case violates the Petitioner's right to due process and contravenes the full faith and credit clause of the constitution.

The constitutional issues now before this Court were first raised on a rehearing of the Minnesota Supreme Court's initial decision affirming the trial court's Order granting the Plaintiff's Motion for Summary judgment. Upon rehearing the Court en banc considered the Appellant's constitutional arguments and found that the reasons presented did not justify a reversal. *Brief of Petitioner at A-1.* Only two of the nine justices dissented from the majority's decision on rehearing.

The Minnesota Supreme Court's decision to apply the law of Minnesota was based upon an application of the methodology of analysis adopted in *Milkovich v. Sarri,* 295 Minn. 155, 203 NW2d 408 (1973). The *Milkovich* test is a five factor test that takes into account these choice of law considerations: predictability of result, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests and application of the better law rule. Citing the ambulatory nature of the contract and Minnesota's contacts with the parties the Court found that the balance favored the application of Minnesota law.

According to Professor Leflar detailed choice of law rules which attempts to designate the constitutional limitations to a State's application of its laws in a multi-state transaction are no longer appropriate. *See R. Leflar, American Conflicts Law* 110 (3ed. 1977). In *Alaska Packers Ass'n v. Industrial Accident Commission,* 294 U.S. 532, 541-42 (1935) the Court found that objections based upon the 14th Amendment to a State's application of its laws to an injury that occurred beyond its territorial boundaries are judged as to whether its application amounted to an arbitrary or unreasonable denial of due process. In respect to the full faith and credit clause

the Court has held that it does not require one State to substitute for its own laws the conflicting or inconsistent law of another State, even though that law is of controlling force in the foreign state with respect to the same persons and events. *Pacific Employers Ins. Co. v. Industrial Accident Commission,* 306 U.S. 493 (1939) (full faith and credit clause did not preclude California from applying its own Worker's Compensation Act where a Massachusetts employee of a Massachusetts employer suffered an injury while working in California).

Of special significance is the fact that this case concerns an ambulatory contract. The Supreme Court recognized the fact that ambulatory contracts warrant more States than one to regulate local activities which are part of multi-state transactions in order to protect the interests of its own people. *See Watson v. Employers Liability Ins. Co.,* 313 U.S. 487 (1941). In the case of *Clay v. Sun Ins. Office, Ltd.,* 377 U.S. 179 (1964) the Supreme Court upheld the application of Florida law to a suit by the insured on a policy issued to him while he was a resident of Illinois. The loss occurred in Florida about two years later. The policy required notice of claims to be given within one year from the date of the loss; Florida law nullified any contractual provision which provided a shorter time for making a claim than did its statute of limitations, which gave Clay five years in which to make a claim. Speaking for the Court Justice Douglas disposed of the insurer's constitutional objections stating:

> We see no difficulty whatever under either the full faith and credit clause or the due process clause. We deal with an ambulatory contract on which suit might be brought in any one of several states.
>
> . . . .

> The Court of Appeals relied in the main on *Hartford Accident and Indemnity Co. vs. Delta and Pine Land Co.*, 292 U.S. 143, and *Home Insurance Co. vs. Dick*, 281 U.S. 397. Those were cases where the activities in the state of the forum were thought to be too slight and too casual, as in the Delta and Pine Land Co. case. 292 U.S. at 15, to make the application of local law consistent with due process, or wholly lacking, as in the Dick case. No deficiency of that order is present here. As Mr. Justice Black, dissenting, said when this case was here before: 'insurance companies, like other contractors, do not confine their contractual activities and obligations within state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made. In this very case the policy was sold to Clay with knowledge that he could take his property anywhere in the world he saw fit without losing the protection of his insurance. In fact, his contract was described on its face as a personal property floater policy (worldwide). The contract did not even attempt to provide that the law of Illinois would govern when suits were filed anywhere else in the country. Shortly after the contract was made, Clay moved to Florida and there he lived for several years. His insurance property was there all that time. The company knew this fact. Particularly since the company was licensed to do business in Florida, it must have known it might be sued there . . .'. 363 U.S. at 221, 80 S. Ct. at 1230.

Id. at 181-82. *See also, Confederation Life Ins. Co. v. DeLara*, 257 So. 2d 42 (Fla. 1972), *cert. denied*, 409 U.S. 953 (1972); *Confederation Life Ass'n v. Vega*, 207 So. 2d 33 (Fla. Dist.

Ct. App.), *aff'd* 211 So. 2d 169 (Fla.), *cert. denied*, 393 U.S. 980 (1968).

Citing *Clay* the Third Circuit Court of Appeals recognized in *Travelers Ins. Co. v. Davis*, 490 F.2d 536 (3rd Cir. 1974) the power of several states to apply their law to a contract with multi-state aspects. In Davis the deceased insured's executors were citizens of Pennsylvania. Suit was brought in the Federal District Court for the Eastern District of Pennsylvania; the issue was whether or not Pennsylvania law governed the issue of the stacking of uninsured motorists coverage with respect to a claim under an automobile liability insurance policy made in Massachusetts arising out of an accident which occurred in Texas. The Court held that Pennsylvania's interest in the case was greatest because the executors were citizens of the State, the State had a vital concern in the administration of the estate and well being of the dependents and therefore under Clay permitted the application of Pennsylvania law. *Id.* at 543.

The basic principle that emerges from this line of cases is that when there is an ambulatory contract, a decision to apply the laws of the forum state is consistent with due process when the parties have sufficient contact with the forum state. In other words, did the forum state apply its law in an arbitrary or unreasonable manner. An examination of the facts of the case at bar discloses that the manner of the Minnesota Supreme Court's resolution of the choice of law issue was not arbitrary and unreasonable. It is undisputed that: (1) the decedent had worked for the past 15 years in the State of Minnesota and had driven across the Minnesota-Wisconsin border almost daily to his employment; (2) plaintiff, the personal representative of the decedent, was appointed in Minnesota; (3) the decedent's personal repre-

sentative was not a party to the contract; (4) the petitioner does business in Minnesota and is subject to the insurance division's supervision; (5) the insurance policy is an ambulatory contract and might be sued on in any state; (6) the policy covered risks within Minnesota by virtue of the decedent's presence within the State; and (7) the State of Minnesota is vitally concerned with the administration of decedents' estates and well being of any surviving dependents who are residents of this State.

The line of cases cited in the Petitioner's Brief fail to provide the foundation necessary to justify certiorari since their holdings are based upon factual considerations not present in the case at bar. In *Home Ins. Co. v. Dick,* 281 U.S. 397 (1929), the Court's resolution of the case was premised on the fact that the forum state's only contact with the contract between the litigants was that *Dick* was a resident of the forum state. This is clearly not the case here since the Respondent's residence was only one of many factors which the Minnesota Supreme Court based their choice of law decision upon. In *John Hancock Life Ins. Co. v. Yates,* 299 U.S. 178 (1936), the choice of law issue concerned a substantive right which went to the validity of the contract. The case at bar presents an issue concerning the extent and character of remedies available. Therefore the Minnesota Supreme Court's resolution of the conflicts of law issue in the case at bar is not contrary to the Court's decision in *Yates.* Finally, the case of *Hartford Accident and Indemnity Co. v. Delta and Pine Land Co.,* 292 U.S. 143 (1934), is inapplicable to the case at bar since it was decided under rigid principles of conflicts of law that are now obsolete. *See Watson v. Employers Liability Ins. Corp.,* 348 U.S. 66 (1954); *Carroll v. Lanza,* 349 U.S. 408 (1954).

CONCLUSION

Certiorari is a matter of judicial discretion and is appropriate in those cases where the state's resolution of a federal question is not in accordance with the applicable decisions of the United States Supreme Court. The previous review of the pertinent decisions discloses that the application of the forum state's law is constitutionally permissible where the parties contacts with the forum state are not too slight or casual. The Court has also recognized that state's interests are as relevant and important as factual contacts in choice of law cases. In the instant case not only are the factual contacts legitimate and significant, but Minnesota also has a substantial and compelling interest in protecting its citizens who have suffered a loss.

Minnesota's contacts with the risk, the occurrence and the parties are not too light or casual so that application of Minnesota law constitutes a violation of the due process clause of the United States Constitution. A State Court's choice of law will be upset under the full faith and credit clause or the due process clause only when the state whose law is applied has no legitimate interest in its application. Such is not the case here and accordingly certiorari should be denied.

Respectfully submitted,

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